

**REMARKS**

Reconsideration of the present application is respectfully requested.

Claims 13-18 and 20-29 are now pending and under consideration. Each of these claims, with the exception of claim 28, is amended herein. Claims 1-12 and 19 were previously canceled.

In this paper the Applicants address all issues raised in the outstanding Office Action and respectfully request reconsideration of the application based on same. It is submitted that all objections and rejection are overcome by amendment and/or the following discussion. Accordingly, it is believed that the claims are in condition of allowance.

Claim 14 is rejected under 35 U.S.C. § 112 paragraph 1 on the grounds that the claimed subject matter of initiating fermentation of a fermentable mixture with a strain of wild yeast present in the ambient environment is not enabled. With all due respect, and in view of the principle that enablement is to be assessed from the point of view of the person of ordinary skill in the art, and whether that person would have to engage in undue experimentation to make the claimed invention, the present rejection is simply not credible. The fact is that wild yeast fermentations have been practiced by humans for several millennia. Persons skilled in the fermentation arts still practice fermentations with wild yeasts present in the ambient environment, as, for example, in making the Lambic style of beer that is very popular in the United States and Europe. It is not understood how the

Examiner could consider the practice of fermenting with wild yeast inoculation as to be beyond the realm of the skilled artisan and require undue experimentation, when the practice has been in continuous use for at least the last several millennia.

Upon consideration of the above, it is simply wrong to declare that fermenting with wild yeast requires a great quantity of experimentation, as is done in the Office Action. Frankly, that statement appears to be made in a vacuum, completely ignoring the vast experience humans have with fermentation throughout history. A method that humans have practiced for several millennia is the very opposite of undue experimentation.

The Examiner is mistaken in stating that “the specification is omitting the air inoculation of wild yeast”. *Controlling legal precedents have established that the specification does not have to describe what is well known in the art.* Information known in the art, in addition to what is provided in the specification, is to be accounted in making the enablement determination. “The test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with *information known in the art* without undue experimentation.” *United States v. Teletronics, Inc.*, 857 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988). A patent need not teach, and preferably omits, what is well known in the art. *In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), cert.

denied, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984). Thus, it seems that not only does basis for the rejection fail to account for human history, it also is at odds with the well established controlling precedents.

Still further, The Examiner states that “the wild yeasts exist in the flour and will be activated when the environmental conditions allow”. This statement has no basis in the record of prosecution. It is purely a matter of conjecture and speculation that wild yeasts are present in the flour. There simply is no evidence in the record to support this assertion, and therefore it cannot support the enablement rejection. As part of duty of establishing a *prima facie* case of nonpatentability, the Examiner must either support this assertion, or else withdraw it as grounds for supporting the rejection of claim 14 under section 112 paragraph 1.

For the reasons set forth above, it is submitted that the rejection of claim 14 under section 112 paragraph 1 is overcome.

Claims 13, 18, 23, 24, and 29 are rejected under 35 U.S.C. § 112 paragraph 2 as being indefinite in view of the claim language “thermally modified”. The Examiner is asked to reconsider the rejection in view of the present specification, which provides ample description of the thermal modifications within the ambit of the claimed subject matter. See, for example,

pages 7-9 of the present specification, where several thermal modifications for ground products are discussed. Accordingly, it is submitted that this aspect of the rejection is overcome.

It is submitted that as amended, the rejection of claim 13 under 35 U.S.C. § 112 paragraph 2 as being indefinite in view of the claim language “thick liquid to solid paste” is overcome.

It is submitted that as amended, the rejection of claim 13 under 35 U.S.C. § 112 paragraph 2 as being indefinite in view of the claim language “pre-dough concentrate” is overcome. The claim defines the “pre-dough concentrate” through the enumerated process steps and ingredients provided for in the claim. It is submitted that the language “pre-dough concentrate” in claim 13 is clear and definite as required by section 112 paragraph 2.

Concerning the rejection of claim 13 under 35 U.S.C. § 112 paragraph 2 as being indefinite in view of the claim language “fermentation continues to a reduced extent”, Applicants respectfully request reconsideration on the basis that this term should be read in conjunction with the method step with which it is associated. Thus, when the pre-dough concentrate is stored at a temperature in the range between 0°C and 6°C, fermentation does not end abruptly. Rather, as the pre-dough concentrate chills over time, the fermentation rate approaches zero and the rate itself is reduced over time as the pre-dough concentrate gradually reduces

temperature due to exposure to the cooling temperatures. See, for example, specification pages 3 and 15.

Claim 14 is amended to clarify what the Applicants intend by the inoculation of the pre-dough concentrate by wild yeasts present in the ambient air.

Concerning the rejection of claim 15, 16, 25, and 26 under 35 U.S.C. § 112 paragraph 2, claim 13 has been amended to provide antecedent basis for the recitation of “main fermentation” in these claims. Further, these claims are amended as necessary to be consistent with the language of claim 13.

The term “paste” is removed from claims 17 and 27, and thus the rejection of same under 35 U.S.C. § 112 paragraph 2 is overcome.

The language “is heated to 25°C” has been amended in claim 17 in order to more clearly identify what the Applicants regard as their invention.

Claim 18 is amended to address the rejection of same under 35 U.S.C. § 112 paragraph 2. It should be understood that the heat generated in fermentation causes evaporation of water in the blend, rendering the blend relatively more solid as fermentation progresses. Thus, the fermentation claimed is a solid state fermentation. Also, see the specification at pages 11 and 12.

Claims 22, 23, and 24 are amended to provide consistency with the language of claim 13. It is therefore believed that the rejection of these claims under 35 U.S.C. § 112 paragraph 2 is overcome.

Claim 29 is amended to recite “gluten content”.

For the reasons set forth above, claims 13-18 and 20-29 meet all requirements of section 112 paragraphs 1 and 2.

As amended, independent claim 13 now recites that the formed blend undergoing main fermentation is introduced to chilled temperatures in the range of 0°C to 2°C immediately upon initiation of the main fermentation, and that blend is maintained in the cooled temperatures to gradually cool the blend to form the pre-dough concentrate in about 72 hours. Support for the claim as amended can be found in the specification at pages 3 and 15, for example. According to the claimed method, the fermentation that takes place in forming the pre dough concentrate is controlled from the time the fermentation commences.

Further, the claimed method provides for the making of a pre dough concentrate that, at a preselected time in the future, generally after which the pre dough concentrate has been stored, is used to make a final bread dough. It is important to note that the making of pre dough according to the claimed method is substantially different from the teachings of the cited references. The inventive pre-dough can be stored a month or longer prior to be used for final dough preparation. As disclosed at page 3 of the specification in the paragraph identified as (2), cooling starts immediately to offset the heat of fermentation, which can raise temperatures to a relatively high level. As set forth in present claim 17, the cooling process insures that the temperatures of the blend do not exceed 32°C, and further, the exposure to the cooling temperatures gradually

cools the blend to a temperature of 0-4°C within 72 hours, in order to prevent damage to the yeast. The pre dough concentrate thus formed is then stored at temperatures of 0-6°C to inhibit fermentation.

Claims 13-18 and 20-29 are rejected under 35 U.S.C. § 103 (a) as unpatentable over Domingues et al., WO 93/01724 ("Domingues") in view of Schou et al., EP 0152 943 ("Schou"). The Applicants respectfully submit that the rejection is overcome.

Domingues discloses a yeast-leavened refrigerated dough product which is a common, ready-to-bake dough product that is prepared from flour, water, and yeast. Much of the Domingues disclosure is directed to determining the optimal temperatures at which to rehydrate dried yeast. Several relatively cold rehydration temperatures are explored. It should be understood that the person skilled in the art who considered Domingues in the hindsight free time period before the present claimed subject matter was made would not have any reason to look to this reference in order to make a pre dough concentrate under the conditions of the claims. First of all, Domingues is concerned with making what appear to be final bread products, that is, products that are ready for baking out of the container. This is in contrast to the pre dough concentrates made by the claimed method, to which additional ingredients are added to the pre dough concentrate at a preselected time in the future in order to make final dough products. Furthermore,

the person of skill in the art in the hindsight free time period would find irrelevant Domingues's extended efforts in working with chilled, rehydrated yeast.

Furthermore, and in significant contrast to the invention claimed herein, the method of Domingues does not teach or suggest the preparation of a pre-dough concentrate that is fermented in accordance with the steps of the claimed method. That is, there is no disclosure or suggestion that upon initiation of the main fermentation, the blend is subjected to cooling temperatures of 0°C to 2°C, as set forth in the claimed subject matter.

Domingues does not suggest any urgency in commencing the cooling process, and the temperatures at which it is to take place. Domingues at page 14 passively describes refrigeration temperatures as between 0°C to 12°C, but because of the passive nature of the disclosure the clear indication of the teaching is that temperatures that are unacceptable under the claimed subject matter are perfectly fine for the final dough products that are the concern of Domingues. Even the preferred cooling temperatures are outside the cooling temperatures of 0°C to 2°C that are set forth in the claimed subject matter. *Id.* Furthermore, Domingues indicates that carbon dioxide production ceases at these temperatures. This is in contrast to the claimed subject matter, where fermentation still takes place, albeit at a reduced rate.

As understood by the Applicants, Schou is cited in combination with Domingues for its teachings relating to grain processing. Notably, all bread products disclosed in Schou are made immediately after formation of dough containing the grains processed according to Schou's teachings. Thus, Schou is completely at odds with the claimed subject matter that concerns pre dough concentrates stored for a period of time before use. Moreover, it can be said that Schou is completely at odds with the teachings of Domingues, since Domingues teaches a final dough product intended for storage. Nothing in Schou informs the skilled artisan why a thermally modified ground product should be used in making a pre dough concentrate. Accordingly, the skilled artisan free of hindsight at the time the invention was made would find Schou to be an irrelevant teaching and would not combine same with the teachings of Domingues.

For the reasons set forth above, it is respectfully submitted that the section 103 rejection is overcome.

**NO FEE DUE**

No fee is believed due. If there is any fee due the USPTO is hereby authorized to charge such fee to Deposit Account No. 10-1250.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,

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